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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/768,363	01/30/2004	Eduardo Jimenez	IR 7433-01	6548

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EXAMINER

COLE, LAURA C

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/768,363

Applicant(s)

JIMENEZ ET AL.

Examiner

Laura C. Cole

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP j 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered. Specifically, the French Patent 38440 on Page 2 Line 20 was not included in any of the Information Disclosure Statements and a copy of this document is not available to the Examiner. If this reference is unavailable to the Applicant as well, it is recommended that it be removed from the record in the Specification.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 37-42 and 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kott, USPN 3,196,299 in view of Halm, USPN 5,651,158.

Kott discloses a power toothbrush comprising a handle (24), a cleaning head attached to the handle (21), a power source of batteries (55, 56), an electrical motor (27), and a mechanical vibratory device (28, an eccentric weight; Column 2 Lines 65-69), the cleaning head (21) having a plurality of cleaning/treating elements (unlabeled, shown in Figure 1). Kott does not disclose that the plurality cleaning/treating elements have characteristics that differ from other cleaning/treating elements. However, Kott teaches a powered device that accepts the heads of conventional toothbrushes so that there is a greater variety of toothbrushes available to a user so that the user has the most desirable bristle hardness, brush contour, etc. and an interchangeable head so that more than one user can use the powered portion of the device (Column 1 Lines 22-36).

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Halm teaches a toothbrush having a head with a resilient flex region that comprises a first end adjacent a handle (43) and a free end (leftmost end shown in Figures 4A-4F) includes a first cleaning/treating element adjacent the first end that is non-movable relative to the first end (the first cleaning/treating element is the bristle tuft "47" nearest portion marked "43" in Figure 4B), a second cleaning/treating element adjacent the free end that is non-movable relative to the free end (leftmost bristle tuft as shown in Figures 4B and 4F, "47"), and a plurality of third cleaning/treating elements disposed between first and second cleaning/treating elements (bristle tuft elements found in the central portion, "46", see Figures 4B and 4F), wherein each of the plurality of third cleaning/treating elements extends from a support structure (44) having at least a portion that is movable relative to the cleaning head (elastomeric material "49" and bridge portions "45"; see Figures 4A-4F), and wherein each of the plurality of third cleaning/treating elements is movable independent of any other third cleaning/treating element (Figure 4D shows each of the third tufts moving independently at different depths when a force is applied). The support structure is capable of enabling angular movement of the third cleaning/treating elements relative to the cleaning head (see Figure 4D, cleaning elements rotate inwards towards the location where force is applied). The first and second cleaning elements are bristle tufts (47; Column 5 Lines 21-22) and the plurality of third cleaning/treating elements disposed between the first and second cleaning/treating elements include bristle tufts (46; Column 5 Lines 21-22). The second cleaning/treating element includes a tuft that follows *at least a portion* of a contour of the free end of the cleaning head (see Figures 4B and 4F). At least one of

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the cleaning/treating elements extends further from the cleaning head than at least one other of the cleaning/treating elements (see Figure 4E; Column 5 Lines 21-22).

It would have been obvious for one of ordinary skill in the art to provide the toothbrush device of Kott with a manual toothbrush that includes a brush head having three cleaning/treating elements, as Halm teaches, in order to provide a cleaning element arrangement that more beneficially cleans the contours of teeth and to provide cleaning elements for cleaning bacteria from a tongue.

3. Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kott, USPN 3,196,299 in view of Braun et al., USPN 6,553,604.

Kott discloses a power toothbrush comprising a handle (24), a cleaning head attached to the handle (21), a power source of batteries (55, 56), an electrical motor (27), and a mechanical vibratory device (28, an eccentric weight; Column 2 Lines 65-69), the cleaning head (21) having a plurality of cleaning/treating elements (unlabeled, shown in Figure 1). Kott does not disclose that the plurality cleaning/treating elements have characteristics that differ from other cleaning/treating elements. However, Kott teaches a powered device that accepts the heads of conventional toothbrushes so that there is a greater variety of toothbrushes available to a user so that the user has the most desirable bristle hardness, brush contour, etc. and an interchangeable head so that more than one user can use the powered portion of the device (Column 1 Lines 22-36).

Braun et al. teaches a toothbrush having a head that comprises a first end adjacent a handle (portion adjacent "10") and a free end (leftmost end shown in Figure

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1) includes a first cleaning/treating element adjacent the first end that is non-movable relative to the first end (the first cleaning/treating element is the bristle tuft marked "14" nearest portion marked "10" in Figure 1), a second cleaning/treating element adjacent the free end that is non-movable relative to the free end (leftmost bristle tuft marked "14" as shown in Figure 1), and a plurality of third cleaning/treating elements disposed between first and second cleaning/treating elements (16), wherein each of the plurality of third cleaning/treating elements extends from a support structure (18) having at least a portion that is movable relative to the cleaning head (Figures 2-3; Column 2 Lines 61-67), and wherein each of the plurality of third cleaning/treating elements is movable independent of any other third cleaning/treating element (Figures 2-3 show that each cleaning/treating element "16" rotates freely in a socket and therefore has independent motion; Abstract). The support structure is capable of enabling angular movement of the third cleaning/treating elements relative to the cleaning head (Column 3 Lines 44-48; see Figures). The first and second cleaning elements are bristle tufts (14). Braun et al. provide these third elements (16) so that chances are increased that the tooth cleaning element will be in contact with the teeth during brushing and that the brush will be more attractive in appearance (Column 1 Lines 59-64) and to penetrate between teeth (Column 2 Lines 39-40).

It would have been obvious for one of ordinary skill in the art to provide the toothbrush device of Kott with a manual toothbrush that includes a brush head having three cleaning/treating elements, as Braun et al. teach, in order to provide a cleaning

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elements that remain in contact with the teeth during brushing, penetrate between teeth, and are attractive in appearance.

4. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kott, USPN 3,196,299 and Halm, USPN 5,651,158 as applied to claim 42 in view of Braun et al., USPN 6,553,604.

Kott, Halm, and Braun et al. disclose all elements above, however Kott and Halm do not include that the cleaning head comprises at least two cleaning/treating elements having different cross-sections. Braun et al further teaches that the first cleaning/treating element may be circular (see Figure 1) and that the second cleaning/treating element is an elongated oval (see Figure 1) in order to clean exposed surfaces of teeth.

It would have been obvious for one of ordinary skill in the art to modify the first and second bristle tufts or cleaning/treating elements of Kott and Halm for ones having two different cross sections, as Braun et al. teach, in order to better conform to contours of the teeth for cleaning.

Applicants Arguments

5. In the response filed 26 July 2005, the Applicant contends that Kott in view of Halm (USPN 5,813,079) does not include that the plurality of third cleaning/treating elements is movable independent of any other third cleaning/treating element.

Response to Arguments

6. Applicant's arguments, filed 26 July 2005, with respect to the rejection(s) of claim(s) 37-45 under Kott in view of Halm (USPN 5,813,079) have been fully considered

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and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Kott in view of Halm (USPN 5,651,158) and Kott in view of Braun et al. (USPN 6,553,604).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LCC

LCC

22 September 2005



MARK SPISICH
PRIMARY EXAMINER
GROUP 3400

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